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8 Attorneys for Plaintiff
ACTUATE CORPORATION

9
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 ACTUATE CORPORATION, a Delaware
corporation,

13 Plaintiff,

14 v.

15 JPMORGAN CHASE BANK, N.A., a Delaware
corporation, as Acquirer of Certain Assets and
16 Liabilities of WASHINGTON MUTUAL BANK,
a Washington corporation,

17 Defendant.
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Case No. C08-2918 SI,

**STIPULATION AND [PROPOSED]
ORDER FOR FILING AMENDED
COMPLAINT**

Complaint Filed: June 11, 2008
Trial Date: December 7, 2009

1 WHEREAS, the Complaint for Breach of Contract and Copyright Infringement was filed
2 in this action on June 11, 2008;

3 WHEREAS, fact discovery closed on August 10, 2009, and trial is currently scheduled to
4 begin on December 7, 2009;

5 WHEREAS, Defendant asserts various affirmative defenses, alleging that the October
6 2004 contract between the parties should fail;

7 WHEREAS, the purpose of the additional claim in the amended complaint is to make
8 explicit on the record that Plaintiff seeks recovery under an equitable theory if Defendant's
9 affirmative defenses proved successful (the parties reserve all of their respective arguments on
10 these issues);

11 WHEREAS, the parties therefore agree that the filing of the amended complaint will not
12 require modifying any of the currently scheduled deadlines or trial date, and will not require re-
13 opening fact discovery;

14 WHEREAS, the undersigned parties wish to avoid burdening the Court with unnecessary
15 motion practice and have agreed that Plaintiff may file the amended complaint in the form
16 attached hereto as Exhibit A, which contains an additional claim for quantum meruit/quantum
17 valebant;

18 IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned,
19 subject to approval of the Court, as follows:

- 20 1. Plaintiff shall be permitted to file the Amended Complaint for Breach of Contract,
21 Copyright Infringement and Quantum Meruit/Quantum Valebant;
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2. Defendant shall be permitted to respond within 20 calendar days of the entry of the order on this stipulation.

Dated: August 11, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Charles T. Graves
Charles T. Graves

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One Market, Spear Tower, Suite 3300
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Attorneys for Plaintiff
Actuate Corporation

Dated: August 11, 2009

HOWREY LLP

By: /s/ Benjamin K. Riley
Benjamin K. Riley

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Attorneys for Defendant
JP Morgan Chase Bank, N.A., as Acquirer of
Certain Assets and Liabilities of WASHINGTON
MUTUAL BANK

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of Court shall file the amended complaint, attached hereto.

IT IS FURTHER ORDERED that Defendant shall have 20 calendar days from the entry of this order to respond to the amended complaint.



Hon. Susan Illston
United States District Judge

1 I, Charles T. Graves am the ECF User whose identification and password are being used to file
2 this STIPULATION AND [PROPOSED] ORDER FOR FILING AMENDED COMPLAINT. In
3 compliance with General Order 45.X.B, I hereby attest that Benjamin K. Riley has concurred in
4 this filing.

5 Dated: August 11, 2009

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

6 By: /s/ Charles T. Graves
7 Charles T. Graves

8 Attorneys for Plaintiff
9 Actuate Corporation